

Finance and Administration Cabinet STANDARD PROCEDURE		ISSUED BY: Department of Revenue; Disclosure
PROCEDURE # 6.2.2	SUBJECT: Third Party Contracts	
EFFECTIVE DATE: 10/28/11		
CONTACT: Disclosure Office		LOCATION: State Office Bldg; Station #6 PHONE: 502-564-2551 or 502-564-2552

## STATEMENT OF AUTHORITY

1. The Finance and Administration Cabinet's Standard Procedures Manual establishes standard mandatory internal procedures cabinet-wide. These procedures are established in accordance with the Secretary's statutory authority under KRS 42.014 and KRS 12.270 to establish the internal organization and functions of the Cabinet as necessary to perform the duties effectively.
2. The Standard Procedures Manual may only be revised in accordance with the process outlined in Standard Procedure #1.1 entitled: "Finance Standard Procedures and Manual".

## I. PURPOSE

To specify the security provisions for State and Federal Third Party contracts.

## II. PROCEDURE

### A. State Third Party Contract Provisions

1. A third party contract for services involving the release of state tax information shall be drafted by the department, office, or division for which the contract services are required.
2. Approval of the contract shall be obtained by the Division Director, Executive Director, General Counsel, and Commissioner.
3. All contracts executed with any third party inside or outside state government using state information shall adhere to the following provisions:
  - a. **KRS 131.190**
    1. In performance of this contract, the contractor agrees to comply with [KRS 131.190](#).
    2. The DOR shall require each contractor and each contractor's employee who uses state data to sign an Acknowledgment of Confidentiality Form in accordance with FAC Standard Procedure 6.2.3.

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3. The contractor shall also assume compliance by its officers, employees, and agents.

4. All work shall be performed under the supervision of the contractor.

**b. Restricted Use of DOR Documents**

1. Any tax return or other business related documents made available in any format by the DOR to the contractor shall be used only for the purpose of carrying out the provisions of the contract.

2. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in performance of this contract.

3. Procedures shall be in place to ensure that employees of the contractor are not allowed to perform work on their own information, or information of an immediate family.

**c. Purging Requirements**

1. The contractor shall guarantee complete purging of data processed or collected during the performance of this contract from all data storage components of its computer facility.

2. All output shall be retained by the contractor for 90 days from the time the work is completed.

3. If immediate purging of all data storage components is not possible, the contractor shall guarantee the safeguarding of any data remaining in any storage component to prevent unauthorized disclosures.

**d. Spoilage and Intermediate Hard Copy Data**

1. Any spoilage or any intermediate hard copy printout which may result during the processing or collection of data shall be given to the DOR.

2. If this is not possible, the contractor shall be responsible for the appropriate secure destruction, as specified by the DOR, of the spoilage or any intermediate hard copy printouts.

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3. The contractor shall also provide the DOR with a statement containing the date of destruction, description of material destroyed, and the method used.
- e. **Subcontracting Approval.** Work to be performed under this contract shall not be subcontracted without the specific written approval of the DOR.
- f. **List of Employees and Agents with Access Authority:**
  1. The contractor shall maintain a list of employees and agents with authorized access to DOR data.
  2. The contractor shall provide the DOR with a list of those employees and agents and shall update the list as necessary.
- g. **Right to Void Contract for Safeguard Failure:** The DOR reserves the right to void a contract if the contractor fails to provide the safeguards described above.
- h. **Written Security Plan:** The contractor shall outline, and provide in writing, a protection and security plan for the confidential information it obtains from the DOR.
- i. **Internal Network Security Requirements:**
  1. The contractor shall not transmit data electronically to the DOR over the wide-area network, due to confidentiality requirements.
  2. The internal network shall be secure and separate from other non-DOR jobs.
- j. **Written Backup Plan and Recovery Procedure:** The contractor shall provide to the DOR, in writing, a copy of their backup plan and recovery procedures for securing and restoring electronically formatted confidential data.
- k. **DOR Security and Confidentiality Agent:** The DOR's contact person for security and confidentiality is the Disclosure Officer, 501 High Street, P.O. Box 1229, Frankfort, KY 40602-1229, (502) 564-2551 or (502)564-2552.

## **B. Federal Third Party Contract Language**

1. [IRC 6103\(n\)](#) provides for the release of federal tax information to a third party contractor when in-house processing is not possible. The DOR may use a third party to process federal tax information only as necessitated.

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2. As set forth in Section 3.4(b) of the Agreement on Coordination of Tax Administration, executed between the Internal Revenue Service (IRS) and the DOR, the IRS shall be given a minimum of 45 days notice prior to the execution of a contract with any third party inside or outside of state government in which federal information will be utilized. A copy of this agreement may be viewed in the DOR Disclosure Office.
3. Written notification describing the information to be used and the involvement of the contractor, including the name of the contractor, shall be provided to the DOR Disclosure Office so that the IRS may be given sufficient time (45 days) to review the contract request.
4. A contract to be signed by both the DOR and the contractor shall be executed, with consultation by the DOR's Disclosure Officer.
5. The following language adapted from [IRS publication 1075 - Tax Information Security Guidelines for Federal, State, and Local Agencies](#) (exhibit 7 – Contract Language for General Services) shall be included in the body of all federal contracts:

#### ***I. PERFORMANCE***

*In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:*

- 1. All work will be performed under the supervision of the contractor or the contractor's employees.*
- 2. Any return or return information made available in any format will be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.*
- 3. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output shall be given the same level of protection as required for the source material.*
- 4. The contractor certifies that the data processed during the*

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*performance of this contract will be completely purged from all data storage components of his/her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.*

5. *Any spoilage or any intermediate hard copy printout which may result during the processing of data will be given to the agency or his/her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his/her designee with a statement containing the date of destruction, description of material destroyed, and the method used.*
6. *All computer systems processing, storing, or transmitting federal tax information are required to adhere to the International Standards Organization (ISO) 15408 called the "Common Criteria". This security standard includes both a description of the security functionality (Protection Profile) and the level of assurance (EAL). To meet functional and assurance requirements, the operating security features of the system must have the following minimum requirements:*
  - a. *a security policy*
  - b. *accountability*
  - c. *assurance*
  - d. *documentation*

*All security features must be available and activated to protect against unauthorized use of and access to federal tax information.*

7. *No work involving federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.*
8. *The contractor will maintain a list of employees with authorized access. Such list will be provided to the Department of Revenue and, upon request, to the IRS reviewing office.*
9. *The Department of Revenue retains the right to void the contract if the contractor fails to provide the safeguards described above.*

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*The contractor will inform each employee with access to federal tax information of the confidentiality of the information, and require each employee to sign the Department of Revenue's [Acknowledgment of Confidentiality](#). The signed [Acknowledgments of Confidentiality](#) will be returned to the Department of Revenue and stored in the Disclosure Office, along with a copy of the contract.*

## **II. CRIMINAL/CIVIL SANCTIONS**

- A. *Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by [IRC sections 7213](#) and [7431](#) and set forth at [26 CFR 301.6103\(n\)-1](#).*
- B. *Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award*

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*of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by [IRC section 7213A](#) and [7431](#).*

- C. Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the [Privacy Act of 1974, 5 U.S.C. 552a](#). Specifically, [5 U.S.C. 552a\(i\)\(1\)](#), which is made applicable to contractors by [5 U.S.C. 552a\(m\)\(1\)](#), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established there under, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

### **III. INSPECTIONS**

*The IRS and the Department of Revenue shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.*

### **III. CONTRACT RETENTION**

- A. Signed third-party contracts shall be maintained in the Finance and Administration's Office of Administrative Services.
- B. A copy of contracts involving the use of federal information shall also be provided to the DOR's Disclosure Office.